



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

March 21, 2003

Ms. Jo Ann Collier
Feldman & Rogers
5718 Westheimer, Suite 1200
Houston, Texas 77057

OR2003-1944

Dear Ms. Collier:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178219.

The North East Independent School District (the "district"), which you represent, received a request for the district superintendent's American Express Card statements for the years 2000, 2001, and 2002. The requestor also asks for travel reimbursement vouchers relating to the superintendent and six other named individuals for the years 2000, 2001, and 2002. We note that you have not submitted information responsive to the request for travel reimbursement vouchers, nor have you raised any exceptions to its disclosure. Therefore, we assume that, to the extent this information exists, it has been released to the requestor. If not, you must release it immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under the circumstances). With respect to the credit card information, you have highlighted information in the submitted documents that you claim is not responsive to the request. You have also highlighted account numbers that you claim are excepted from disclosure under section 552.136 of the Government Code. We have considered your comments and reviewed the submitted information.

Initially, we must address the district's obligations under section 552.301 of the Government Code. Sections 552.301(a) and (b) provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [Public Information Act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the tenth business day after the date of receiving the written request.

The present request bears the district's date stamp indicating it was received by the district on December 18, 2002. We received your request for a decision on January 15, 2003. Based on the information you provided, we cannot conclude that the district timely submitted this request for an open records decision within the ten business day deadline under section 552.301. See Gov't Code §§ 552.301(a), (e)(1)(C).

When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public. See Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. See *Hancock v. State Bd. of Ins.*, 797 S.W.2d at 381-82; Open Records Decision No. 319 (1982). Normally, a compelling interest exists when some other source of law makes the information confidential or when third party interests are at stake. Open Records Decision No. 150 at 2 (1977). You claim that some of the highlighted information at issue is excepted from disclosure under section 552.136 of the Government Code. Because section 552.136 protects the interests of third parties, we will address your claim under section 552.136.

First, however, we address your contention that some of the submitted information is not responsive to the present request. You indicate that the district has a corporate credit card account with American Express, and that several district employees are authorized to make charges to the account with individually assigned corporate credit cards. You contend that the portions of the submitted statements reflecting charges on credit cards assigned to employees other than the district superintendent, and the information reflecting total charges made by all employees, are beyond the scope of the present request. This office has found that upon receipt of a request for information, a governmental body must make a good faith effort to relate the request to information which it holds. Open Records Decision No. 561 (1990). The present request expressly seeks copies of the district superintendent's credit card statements for the years 2000, 2001, and 2002, and is not limited to information in the statements regarding credit card charges made by the district superintendent. You state that the corporate credit card account is in the name of the district superintendent. Furthermore,

we note that the submitted credit card statements are specifically addressed to the district superintendent. We therefore determine that the submitted statements are responsive to the present request in their entirety.

Next, section 552.022 of the Government Code provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

The submitted credit card statements are within the scope of section 552.022(a)(3). Therefore, as prescribed by section 552.022, this information must be released unless it is confidential under other law.

The submitted credit card statements contain account numbers that are excepted from disclosure under section 552.136 of the Government Code. Section 552.136 provides in relevant part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

We have marked a sample of the account numbers that the district must withhold pursuant to section 552.136 of the Government Code. As you raise no other exceptions to disclosure, we determine that the remainder of the submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 178219

Enc: Submitted documents

c: Ms. Sudie Sartor
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(w/o enclosures)